IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.778 OF 1993

Shankar Parshuram Joshi ...Petitioner
Vs.
The State of Maharashtra & Anr. ...Respondents

Mr. Ameya Tamhane i/by Ms Seema Sarnaik for the Petitioner.

Mr. S.M. Dandekar, A.G.P. for the Respondent No.1-State.

CORAM : SMT RANJANA DESAI AND
SHRI ABHAY S. OKA, JJ.

DATE : DECEMBER 16, 2005.

JUDGMENT (PER ABHAY S. OKA, J):

1. We have heard the learned Advocate appearing for the Petitioner as well as the learned A.G.P. appearing for the Respondent No.1 at considerable length. With a view to appreciate the submissions made by the learned Advocates appearing for the parties, it will be necessary to advert to the facts of the case.

2. The Petitioner was born on 16th July, 1926 and was appointed as a Laboratory Assistant by the second Respondent-the Victorial Jubilee Technical Institute. The second Respondent, at the relevant time, was affiliated to University of Mumbai and has been conducting various courses in engineering. On 24th May, 1983 the Vice Chancellor of the University of

Mumbai issued a direction under section 11(6)(b) of the Bombay University Act, 1974. By the said direction the age of retirement of Class III employees working in the affiliated colleges was fixed at 58 years with a provision for granting extension upto 60 years if found medically fit. The second Respondent issued an order dated 31st July, 1984 holding that the Petitioner has retired on completing age of 58 years. Being aggrieved by the said order, the Petitioner preferred an appeal before the College Tribunal. By order dated 05th July, 1984, the learned Presiding Officer of the College Tribunal allowed the appeal and directed that the Petitioner shall be continued in the employment with effect from 01st August, 1984. As a result of the order passed by the learned Presiding Officer of the College Tribunal, the Petitioner was continued in the employment and ultimately retired on 15th July, 1986. In the meanwhile, on 01st May, 1985 the Maharashtra Non-Agricultural Universities and Affiliated Colleges (Terms and Conditions of Service of Non-teaching Employees) Rules, 1984 were brought into force. With effect from 01st January, 1986, the recommendations of the Fourth Pay Commission were made applicable to the non-teaching staff of all engineering colleges including the second Respondent. The said decision has been recorded in G.R. dated 30th May, 1990 issued by the State Government.

3. On 20th February, 1985, the State Government issued G.R. by which option was granted to all non-teaching staff of the colleges to choose between pension and gratuity scheme or gratuity and contributory provident fund. The form meant for exercising the option was not made available to the Petitioner and therefore, the Petitioner had to approach this Court by filing Writ Petition No.137 of 1990. After the said Petition was filed, the first Respondent conceded to the prayer made therein by the Petitioner and he was accordingly allowed to exercise his option. In the meanwhile, on his retirement, the Petitioner was paid gratuity and provident fund inclusive of the contribution by the second Respondent. As the Petitioner was allowed to exercise the option, on 06th June, 1990 the Petitioner refunded sum of Rs.30,985/- to the second Respondent being the contribution made by the second Respondent to the Provident Fund.

4. The grievance of the Petitioner is that instead of calculating the gratuity and pension from the date of his actual retirement i.e. from 15th July, 1986, the Respondents have calculated the said benefits by taking the date of retirement as 31st July, 1984 i.e. the retirement on completion of 58 years. According to the case of the Petitioner, as

the recommendations of the Fourth Pay Commission were made applicable to Class III employees of the second Respondent with retrospective effect from 01st January, 1986. From the said date, till the date of his actual retirement the Petitioner will be entitled to a difference in the salary on the basis of recommendations of Fourth Pay Commission. The prayer in this Petition is for directing the Respondents to pay balance amount of gratuity and difference in the pay for the period between 01st January, 1986 to 15th July, 1986 together with the interest at the rate of 18 per cent per annum.

5. The first Respondent has filed affidavit-in-reply of one Shri Hemant Prabhakar Taskar, Incharge, Joint Director of Technical Education. In the said affidavit it is stated that the second Respondent was an aided institute of Government of Maharashtra and the second Respondent is under the control of the directorate of the Technical Education, Maharashtra State, Bombay and is fully funded by the State Government. It is admitted in the affidavit that pension and death-cum-retirement gratuity scheme was applied to the employees of the second Respondent. It is the contention of the first Respondent that the order of the learned Presiding Officer of the College Tribunal was not relating to

any pensionary benefits and by the said order the Petitioner was merely given extension till 15th July, 1986. Reliance is placed on G.R. dated 20th February, 1985 1990 in the affidavit-in-reply. It is not disputed that the Petitioner was allowed to exercise his option for pension and death-cum-gratuity scheme and that the Petitioner has refunded the entire contribution made by the second Respondent alongwith interest to the provident fund. The contention raised by the State Government is that the date of retirement will have to be taken as 15th July, 1984 and not 15th July, 1986.

6. The learned Advocate appearing for the Petitioner has placed on record during the course of his submissions a copy of judgment and order dated 05th July, 1984 passed by the learned Presiding Officer of the College Tribunal in Appeal No.16 of 1984. He submitted that the age of retirement of the Petitioner stands extended till 60 and as date of retirement will have to be treated as 15th July, 1986, all retirement benefits will have to be calculated on the basis of the said date. He submitted that the benefits of the recommendations of the Fourth Pay Commission were made applicable to the employees of the second Respondent with effect from 01st January, 1986 and therefore, the Petitioner is entitled to the

benefit of the said recommendations. He submitted that the Petitioner must be given all benefits by taking his date of retirement as 15th July, 1986. The learned A.G.P. appearing for the first Respondent placed reliance on Government Resolutions dated 20th February, 1985 and 12th April, 1990. The learned A.G.P. submitted that as per G.R. dated 20th February, 1985 and in particular clause 6 thereof, an employee covered under Pension and Death-cum-Retirement Gratuity Scheme shall not be granted extension in service beyond the age of superannuation, and if any such re-employment is granted by the institution, such service shall not be counted for the pension or Death-cum-retirement Gratuity as it would amount to fresh appointment. The learned A.G.P. submitted that, therefore, the date of retirement of the Petitioner is rightly taken as 15th July, 1986.

7. We have considered the submissions. reference will have to be made to the decision of the learned Presiding Officer of the College Tribunal in the controversy in Appeal No.16 of 1984 and companion appeals. The controversy before the College Tribunal was as to how the conflict between the rules framed by the second Respondent and the circular issued by the Vice Chancellor of the University should be resolved.

The circular No.200 of 1983 issued by the Vice Chancellor provided that the age of the retirement of the class III employees of the affiliated colleges shall be 58 years, with a provision for yearly extension thereafter till the age of 60 years on production of certificate of physical and mental fitness. The rules framed by the second Respondent provided that age of retirement will be 58 years. The learned Presiding Officer of the College Tribunal held that the employees of the second Respondent were entitled to benefit of the said circular issued by the Vice Chancellor. The learned Presiding Officer, therefore, held that the Appellants before him including the present Petitioner were entitled to yearly extension up to 60 years of age under the Vice Chancellor's circular.

8. By Government Resolution dated 20th February, 1985 which is annexed to the affidavit-in-reply of the first Respondent, the State Government applied scheme of pension and death-cum-gratuity and other retirement benefits admissible to the government servants to the teaching and non-teaching employees in recognised non-government aided engineering, technical and or technological colleges with retrospective effect from 01st July, 1982. By subsequent G.R. dated 12th April, 1990 the benefits of G.R. dated 20th February,

1985 were also made available to the employees of Government aided engineering, technical and or technological colleges working in post graduate section. The State Government in its reply has not disputed that the benefit of the pension and death-cum-retirement gratuity scheme under the G.R. dated 20th February, 1985 was made applicable to the Petitioner.

9. The first question which is required to be considered as what should be date of retirement for the purposes of the said scheme. Clause No.5 and 6 of the G.R. dated 20th February, 1985 are relevant for these purposes. The said clauses read thus:

> 5. Age of retirement :- The age of retirement for the employees in non-Government aided Technological Colleges, Polytechnic and Pharmacy Institutes shall be sixty years in case of teachers and fifty eight years in case of non-teaching employees as laid down in Government Resolution, Education and Employment Department No.GEC-4482/125101(219)TE-1(A), dated 19th May 1983, read with Government Resolution, Education and Employment Department No.GEC-4484/250370(750)TE-1(A), dated 28th

November, 1984.

6. Extension of Re-employment :- The employees covered under pension-and-Death-cum-Retirement Gratuity Scheme shall not be granted extension in Service beyond the age of superannuation, and if any such re-employment is granted by the institution, such service shall not be counted either for pension or Death-cum-retirement Gratuity as it would amount to fresh appointment.

The second question which is required to be considered is whether the Petitioner was granted extension or re-employment after superannuation or whether date of superannuation was postponed.

10. The College Tribunal has held that the Petitioner is entitled to benefit of the circular No.200 of 1983 issued by the Vice Chancellor of University of Mumbai. The said circular itself provides that retirement age of class III employees of the affiliated colleges should be 58 years and in case of those employees who produce the certificate of physical and mental fitness, yearly extension can be granted thereafter up to 60 years. Thus, the date of

superannuation of 15th July, 1984 is not postponed to 15th July, 1986, but after reaching the age of superannuation, the Petitioner was granted extension. In fact, in paragraph No.13 of the Judgment, the learned Presiding Officer held that the appellant was entitled to an yearly extension for two years up to 60 years of age. It is thus obvious that clause No.6 of G.R. dated 20th February, 1985 will come into operation and the service after 15th July, 1984 cannot be counted either for pension or death-cum-retirement gratuity as extention granted after 58 years will have to be treated as re-employment. Therefore, the computation of pension and gratuity made by treating the date of retirement of the Petitioner as 31st July, 1984 cannot be faulted with.

11. Another question is regarding making available benefits of the Fourth Pay Commission to the Petitioner. A specific contention to that effect has been raised by the Petitioner in the Writ Petition. In paragraph No.10 the Petitioner has stated thus:

> 10. The Petitioner says that the Respondents should have paid difference between the salary they actually paid and the revised salary he was entitled to as per recommendations of the Fourth Pay Commission

which the Respondent No.1 by a notification dated 30.05.1990 made applicable to the non-teaching employees of all Non-Govenment Engineering Colleges affiliated to the University of Bombay. The Petitioner says that the said recommendations were made applicable with effect from 01.01.1986. The Petitioner, therefore, says that for the period of 01.01.1986 and 15.07.1986 he was entitled to a sum of Rs.1380.20 by way of such difference of actual pay and his pay as per said recommendations.

12. In the affidavit-in-reply there is no denial of the averments made in paragraph No.10 of the Petition. There is no dispute about the fact that the order passed by the College Tribunal on 05th July, 1984 was implemented and the Petitioner was given extension for two years up to 15th July, 1986. It is also not in dispute that on 30th May, 1990, the recommendations of the Fourth Pay Commission were made applicable to Class III employees of the second Respondent with effect from 01st January, 1986. Thus, the Petitioner is entitled to benefit of the recommendations of the Fourth Pay Commission with effect from 01st January, 1986 and to that extent, the Petition must succeed. However, prayer regarding

grant of additional gratuity cannot be considered as in view of clause Nos.5 and 6 of the G.R. dated 20th February, 1985, the age of retirement will have to be taken as 58 years and not 60 years.

13. Thus, the Petitioner is entitled to difference in his pay for the period between 01st January, 1986 and 15th July, 1986 as he is entitled to pay fixed as per the recommendations of Fourth Pay Commission with effect from 01st January, 1986. The Petitioner is denied the said benefit and therefore, he is entitled to a reasonable amount of interest. It must be noted here that the Petitioner filed this Petition belatedly on 29th March, 1993. The Petition was dismissed for default on 11th August, 2004 and was restored by the order dated 20th September, 2004. The prayer made in the Petition is for interest on the difference of salary at the rate of eighteen per cent per annum from 15th July, 1986 till realisation. As Petition is filed on 29th March, 1993, we are not inclined to grant interest for the period prior to the said date. Considering the fact that even the Petitioner has to some extent contributed in delay in disposal of this Writ Petition, we are inclined to fix rate of interest only at the rate of 6 per cent per annum.

14. Hence, we pass the following order:

: O R D E R :

i) The Petitioner will be entitled to salary as per the recommendations of the Fourth Pay Commission for the period between 01st January, 1986 to 15th July, 1986.

ii) The Respondents are accordingly directed to pay the difference in salary to the Petitioner for the aforesaid period within the period of four months from today together with simple interest on the said amount at the rate of six per cent per annum from 29th March, 1993 till the date of payment.

iii) Rule is made partly absolute in above terms with no orders as to costs.

Smt. Ranjana Desai, J.

Shri. Abhay S. Oka,J.